

INITIAL STATEMENT OF REASONS:

This action amends provisions governing the gang management of inmates within the California Department of Corrections and Rehabilitation (Department). California Code of Regulations, Sections 3040.1, 3341.5, 3375, 3375.3, and 3378 are being amended as a result of a settlement agreement, in the case of *Castillo v. Alameida, et al.*, Case No. C-94-2847-MJJ-JCS, U.S. District Court Northern District of California. This settlement agreement is a result of Inmate Castillo's challenge of the validation process for prison gang members/associates.

The Department certifies that gang activity undermines the safety and security of its institutions. The gang validation and debriefing process is necessary in order to decrease the risk that prison gangs pose to the safety and security of the institutions. The content of these regulations, pursuant to departmental policy, had been confined to the confidential and restricted portion of the Department's Operations Manual (DOM) Section 55000, and therefore, had been exempt from the Administrative Procedure Act (APA) [Penal Code section 5058 (c)(1)(B)(3) and Government Code Section 6254(f)]. Due to the ongoing need for an effective Gang Management policy and the urgent need to comply with ongoing departmental litigation, language regarding gang management is now being placed in the non-restricted DOM. This language is now subject to the APA, thereby requiring regulatory language to be placed in the Title 15. Changes to the regulations include language regarding Due Process, single source rule, hearsay, and staff training, all previously located in the confidential DOM.

This language provides the inmate and staff with clear and concise language regarding prison gang validation. This action includes language that states that a gang member or associate who is validated as a dropout of a prison gang may be removed from the general population or any other placement based upon a reliable source item identifying the inmate as an active gang member or associate of the prison gang with which the inmate was previously validated. This is necessary for the safety and security of inmates who have been validated as a dropout of a prison gang. Additionally, the verification methods now requires staff to articulate the basis for determining that the content of visual or audible observations or conduct at issue indicate gang activity; to articulate why, based on either the explicit or coded content of any material or documents, including addresses and names evidencing gang activity, that the written material is reliable evidence of association or membership with the gang; and to document information gathered in a written form.

In addition, changes for enhanced clarity, including reference, grammatical corrections, and changes in punctuation are also made to meet departmental standards.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

Subsections 3040.1(a) through 3040.1(c)(2) are unchanged.

Subsection 3040.1(c)(3) is amended to change the name Criminal Activities Coordinator to Institution Gang Investigator. This is necessary for consistency throughout the text and to better describe the duties of the individuals whose job description is to investigate gang affiliation and not to "coordinate criminal activities."

Subsection 3040.1(c)(4) through 3040.1(i) are unchanged.

Subsections 3341.5(a) through 3341.5(c)(5) are unchanged.

Subsection 3341.5(c)(6) is amended to reflect language agreed upon in the Settlement Agreement regarding gang validation. This language provides the inmate and staff with clear and concise language regarding prison gang validation. The definition of "current activity" specifies that any documented activity within the past six years shall be utilized for the removal of the inmate from the general population, the review of the initial segregation order, and all periodic review of the indeterminate Security Housing Unit (SHU) term. Current activity is defined as, any documented activity within the past six (6) years. This language is consistent with existing language

Section 3378(e) regarding gang activity. The term “inactive” means that the inmate has not been involved in gang activity for a minimum of six years. Inmates categorized as inactive who are suitable for SHU release are no longer categorized as being currently activity in gang activity. Additionally, this subsection is amended to include language that states that a gang member or associate who is validated as a dropout of a prison gang may be removed from the general population or any other placement based upon a reliable source item identifying the inmate as an active gang member or associate of the prison gang with which the inmate was previously validated. This is necessary for the safety and security of inmates who have been validated as a dropout of a prison gang.

Subsection 3341.5(c)(7) through 3341.5(c)(10) is unchanged.

Subsections 3375(a) through 3375(g) are unchanged.

Subsection 3375(h) is amended to include language that specifies an inmate shall be provided a copy of all non-confidential staff documentations placed in the inmate’s central file unless otherwise requested in writing by the inmate. This is necessary to ensure that inmates are properly notified and provided all relevant documents.

Subsections 3375(i) through 3375(k) are unchanged.

Subsection 3375.3 initial paragraph through 3375.3(a)(4)(A) are unchanged.

Subsection 3375.3(a)(4)(B) is amended to better describe the codes that are used as the method of verification of gang activity. The verification methods now requires staff to: 1) articulate the basis for determining that the content of visual or audible observations or conduct at issue indicate gang activity; 2) articulate why, based on either the explicit or coded content of any material or documents, including addresses, and names, evidencing gang activity, that the written material is reliable evidence of association or membership with the gang; and 3) document information gathered in a written form. Group or individual photographs with gang connotations shall be dated prior to the photo being relied upon as a source item. The photo shall not be utilized if it is estimated to be older than six years. Any photograph utilized as a source item that depicts gang members shall require that at least one of the individuals in the photo be previously validated by the department. This will ensure that validation of the gang member has merit and not just a photo taken with a random group of individuals.

In all instances, the information disclosed or documented on a form would not jeopardize the safety of any person or the security of the institution. The regulation is necessary because it requires the inclusion of as much information as possible without compromising safety and security.

Subsection 3375.3(a)(5) through 3375.3(f) are unchanged.

Subsections 3378(a) through 3378(b) are unchanged.

Subsection 3378(c) is amended to delete reference to the word coordinator. This is necessary for consistency throughout the text and to better describe the duties of the individuals whose job description is to investigate gang affiliation rather than coordinate criminal activities.

Subsection 3378(c)(1) is amended to ensure that documentation of the inmate/parolee’s gang activity status is specific to a currently active, or inactive member/associate. This section is consistent with Section 3341.5(c)(5).

Subsection 3378(c)(2) is amended to delete the word coordinator from text. This is necessary for consistency throughout the text and to better describe the duties of the individuals whose job description is to investigate gang affiliation rather than coordinate criminal activities. Additionally, this subsection focuses on currently active gang member activity entered into the inmate’s central file. Safety concerns of an inmate/parolee have never been facts that were entered into the central file with regards to gang validation. This regulation corrects that error in the language.

Subsection 3378(c)(3) and (4) is amended to ensure that at least one (1) of the three (3) required independent source items of documentation indicative of actual gang membership be a direct link to a current or former validated member or associate of the gang. This is necessary to ensure that information gathered to validate gang membership is specific and accurate and that inmates' associations are direct links and not just minor associations with other gang members.

Subsection 3378(c)(5) is unchanged.

Subsection 3378(c)(6) is amended to include the specific process by which verification of an inmate/parolee's gang identification shall be validated or rejected. This subsection is a direct result of the stipulated agreement and language has been written to comply with the agreement. This also affords the inmate/parolee all due process rights. The specific processes include step-by-step instructions regarding: (A) prior to submission of a validation package, the subject (inmate/parolee) shall be interviewed and given an opportunity to be heard in regard to the source items used in the validation or inactive review; (B) the inmate is provided with written notice at least 24 in advance of the interview, it also allows for the interview to be held earlier than 24 hours if the inmate waives that right in writing; (C) all source information referenced in the validation or inactive review process shall be disclosed to the inmate at the time of notification and the inmate shall receive copies of all non-confidential documents, unless the inmate requests in writing that he not receive copies of these documents. Also, confidential information will be disclosed via a departmental Confidential Information Disclosure Form; (D) the interview shall be documented and recorded on the appropriate form as stated in Section 3378(c)(2) and include a record of the inmate's opinion on each source item used for validation, and provide a written record to the inmate within fourteen calendar days prior to the submission of the validation package to the Law Enforcement Investigation Unit (LEIU); (E) the validation package or inactive review, including the documented interview shall be submitted to LEIU; (F) the inmate's mental health status and/or the need for staff assistance shall be evaluated prior to the interview, and Section 3318 sets the guidelines for staff assistance assignments; and (G) lists the forms and procedure for validation and/or rejection of evidence documentation.

Subsection 3378(c)(7) is unchanged.

Subsection 3378(c)(8) is amended to comply with the stipulated agreement and make more specific the sources and criteria upon which gang identification is based. The new language defines existing criteria, such as self admission. The new language also expands on existing definitions and ensures specific, detailed documentation and disclosure of information verbally and in written form to the inmate/parolee and in the central file. Criteria such as tattoos and symbols, photographs, written material, must be described, dated, and staff must articulate why the material is being considered. Additionally, staff shall document and disclose information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

Subsection 3378(d) through 3378(e) are unchanged.

Subsection 3378(f)(1) is renumbered to 3378(f) to correct an incorrect numbering sequence. Additionally, it is amended to include language that states that a gang member or associate who is validated as a dropout of a prison gang may be removed from the general population or any other placement based upon a reliable source item identifying the inmate as an active gang member or associate of the prison gang with which the inmate was previously validated. This is necessary for the safety and security of inmates who have been validated as a dropout of a prison gang. Additionally, a non-substantive change is made to capitalize the word Section, to be consistent throughout the text.

Subsections 3378(f)(2) and (f)(g) are renumbered to 3378(g) and (h), respectively. Additionally, a non-substantive change in (h) is made to capitalize the word Section, to be consistent throughout the text.